



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 15, 1994

Ms. Helen M. Gros
Division Chief of General Counsel
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR94-371

Dear Ms. Gros:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 26237.

The City of Houston (the "city") has received a request for an offense report concerning an incident in which three people died when a car being followed by an unmarked Houston Police Department car crashed. You state that the requested information is excepted from required public disclosure under section 552.108.

Section 552.108 provides that:

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure].

Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information that relates to the incident. Open Records Decision Nos. 474 (1987); 372 (1983). Certain

factual information generally found on the front page of police offense reports, however, is public even during an active investigation. *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) at 3-4 (listing factual information available to the public).

After a file has been closed, either by prosecution or by administrative decision, the availability of section 552.108 is greatly restricted. Open Records Decision No. 320 (1982). The test for determining whether information regarding closed investigations is excepted from public disclosure under section 552.108 is whether release of the records would unduly interfere with the prevention of crime and the enforcement of the law. Open Records Decision No. 553 (1990) at 4 (and cases cited therein). A governmental body claiming the "law enforcement" exception must reasonably explain how and why release of the requested information would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 434 (1986) at 2-3.

You state that the city has released the public portion of the incident report relating to the accident which is the subject of the request. As of the date of your letter to this office, the offense report had not yet been completed. You assert that when the offense report is completed, all but the public portion will be excepted from disclosure because the accident at issue is the subject of an ongoing criminal investigation and murder charges relating to the accident are currently pending. Given these facts, we agree that the offense report is excepted from required public disclosure under section 552.108, with the exception of the information which *Houston Chronicle Publishing Co.* requires be made public.

If you have questions about this ruling, please contact our office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/MAR/rho

Ref.: ID# 26237

Enclosures: Submitted documents

cc: Mr. Joe Izbrand
KTRH News Director
510 Lovett Blvd.
Houston, Texas 77006
(w/o enclosures)